IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 684 OF 1996.

1. Bhau Valku Kokambe,

2. Laxman Valku Kolambe,

R/o. Dhakate Chandai, Taluka-
Karjat, District- Raigad. ... Appellant.

V/s.

The State of Maharashtra. ... Respondent.

Nitin V. Pradhan for the appellant.

B.H.Mehta, A.P.P. for the respondent-State.

CORAM : V.G.PALSHIKAR AND V.C.DAGA, JJ.

DATED : 13th June 2005.

JUDGMENT : (Per V.C.Daga, J.)

. This is an appeal against the judgment and order dated 30th October, 1996 passed by the Additional Sessions Judge, Raigad at Alibag in Sessions Case No.167 of 1994 convicting appellant No.1 - accused No.1 for the offence under section 302 of I.P.C. and sentencing him to undergo R.I. for life and to pay a fine of Rs.500/- and in default to suffer R.I. for two months. Whereas appellant No.2-accused No.2 came to be sentenced to suffer R.I. for two years and to pay fine of Rs.200/- and in default to suffer R.I. for one month.

Factual Matrix :

. The prosecution case is as follows:

2. The complainant-Baban Pandurang Kolambe resides at village Chandai with his wife, brothers, their wives and children. One river known as 'Ulhas' flows by the side of the said village Chandai.

3. The complainant had excavated sand from the said river on 15th May, 1994. M/s.Laxman Kolambe and Nagu Mahadu said to have removed the said sand in the bullock cart on 19th May, 1994 and sold it to one Rajan Balkrishna resident of village-Palaspe. Removal of sand was witnessed by son of the complainant and his cousin brother Mahadu.

4. It is a prosecution case that on 31st May, 1994 at about 10.00 a.m. complainant had gone to the house of Laxman Valku to enquire as to why the sand excavated by them was removed. The accused reacted sharply and retorted as to whether the sand belonged to his father. This resulted in hot exchange of words between them.

5. One Ramchandra Pandu, younger brother of the complainant came on the spot noticing hot exchange of words and shouts and requested them not to raise any quarrel. In the meantime, M/s.Mahadeo Namdeo and Narayan Baban also came to the spot.

6. Further the prosecution version is that Ramchandra Kolambe had held complainant in his arms and was trying to push him towards his house so as to avoid any possible scuffle. In the meanwhile, Laxman Valku came on the spot with stick. His brother Bhau came on the scene with iron bar. Bhau Kolambe inflicted blow by means of iron bar on the head of Ramchandra Pandu, with the result, Ramchandra Pandu fell down. Laxman Valku inflicted 3-4 blows on the back of Ramchandra by stick and also inflicted blows on the legs and in the process injured his right hand thumb.

7. It is also a prosecution case that Durgabai and Janardan Kolambe came there and took Ramchandra to his house. In the meanwhile Ganpat Patil and Kashinath Bagale residents of Chandai also came on the scene. They sent Laxman and his brother to their house. In the meanwhile, Ramchandra was

removed to Kadav in the bullock cart for treatment. He was, therefore, taken to Karjat Hospital. He was again removed to Hospital at Thane and from Thane Hospital to Sion Hospital at Mumbai as per medical advice. During the course of treatment, he died on 22nd May, 1994 at 9.45 a.m. in Sion Hospital at Mumbai.

8. The complainant went to the police station and filed complaint on 22nd May, 1994. The complaint was registered under section 302, 323 read with 34 of I.P.C. at CR No.29/94-Karjat.

9 Pursuant to the aforesaid, P.S.I. Mr.Dome visited the place of offence and drew panchanama on 23rd May, 1994. The accused persons were arrested. Their clothes were attached under panchanama (Exh.23). Iron bar and stick of accused Bhau were also attached under Panchanama (Exh.24-A). P.S.I. Mr.Dome recorded statement of witnesses. The clothes of person of dead body were attached under Panchanama (Exh.9). The same were sent to the Chemical Analyser along with forwarding letter. After completion of investigation charge-sheet was filed against the present appellants - accused to prosecute them under section 302, 323 read with 34

of I.P.C. The learned Judicial Magistrate committed the case to the Court of sessions, Raigad vide order dated 1st October, 1994.

10. The Sessions Judge, after going through the papers and hearing prosecution and accused persons, charged them under sections 302 and 323 read with section 34 of I.P.C. Accordingly, charges were framed against both the accused. Particulars of charges were read over and explained to them. They pleaded not guilty and claimed to be tried.

11. The defence of the accused persons is of total denial. That no blows were received by the deceased from any of them. The Sessions Judge then tried both the accused persons and after considering the evidence and the circumstances available on record convicted both the accused for the offences with which they were charged.

12. Being aggrieved by the impugned judgment and order, the appellants have preferred this appeal.

Submissions :
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13. Mr.Nitin Pradhan, learned counsel appearing for the appellants submitted that entire judgment is

based on conjectures and surmises. The learned trial Judge had erred ind appreciating the evidence on record. According to him, in absence of independent evidence, the learned trial judge ought not to have relied upon the evidence of interested witnesses apart from the fact that their evidence did not corroborate the medical evidence available on record.

14. Mr.Pradhan submits that the learned Judge ought to have noted the fact that the interested witnesses never depose true nature of events which takes place. He submits that P.W.3-Narayan and P.W.5- Mahadeo admitted having pacified the parties but did not state about the alleged assault upon Ramchandra. This fact itself is sufficient to give rise to the suspicion as regards the true nature of events. The delay of two days in filing the complaint without any satisfactory explanation is sought to be encashed by the learned counsel for the appellants. According to Mr.Pradhan, injuries sustained by the appellants have not at all been explained by the prosecution. The non-explanation of injuries sustained by the accused, according to him, leads to only one inference that the prosecution has suppressed the genesis and origin of

the occurrence and did not present a true version of the case.

15. Per contra, learned A.P.P. appearing for the State submitted that entire case centered around three eye witnesses i.e. P.W.2, P.W.3 and P.W 4. He submitted that evidence of none of them could be shaken up in the cross-examination. He took us through the entire evidence and tried to support each and every findings recorded by the Court below.

Consideration :

16. Having heard rival parties, the prosecution in support of its version examined eight witnesses. P.W.1 is Raghunath Govindrao Pawar, Circle Officer, Kadav, who drew map of the scene of the offence. P.W.2 is Baban Kolambe, the complainant. P.W.3 and P.W.4 are the witnesses; who have seen the incident. P.W.5- Mahadeo Kolambe is said to be an eye witness; who was declared hostile. P.W.6- Shriram Rasal is a Panch witness; who was also declared hostile and was cross-examined by the prosecution. P.W.7 is Dayanand Dome is the investigation officer; who has investigated the case. P.W.8 is Dr.Kamalesh Mistry who has conducted post-mortem.

17. At the outset, we may point out that it is not in dispute that all the three eye witnesses i.e. P.W.2; P.W.3 and P.W.4 are related to the deceased. The law is well settled that the testimony of the witnesses cannot be discarded merely on the ground that witnesses are related to the deceased, if their evidence is reliable; legal and unimpeachable. The same could be the basis of conviction as held by the Apex Court in the case of **Sarwan Singh v. State of Punjab**, AIR 1957 SC 637. The Apex Court also ruled difference between the related witnesses and interested witnesses. Every related witness cannot be said to be an interested witness. In **State of Rajasthan v. Kalki**, AIR 1981 Sc 1390, the Apex Court has observed that the related witnesses are not equivalent to interested witnesses. The relevant observations in this behalf are as under:

> " 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'.

A reference can also be made to the decision of the Apex Court in the case of **Dalbir Kaur v. State of**

Punjab, AIR 1977 SC 472; wherein it is observed as under:

> " A close relative, who is a very natural witness in the circumstances of a case, cannot be regarded as an 'interested witness'. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason."

18. With the aforesaid understanding of law laid down by the Apex Court, let us turn to the evidence of P.W.2, P.W.3, P.W.4 to find out whether conviction can be sustained.

19. P.W.2 Baban is the complainant. He has stated on oath that there is one river by name 'Ulhas' flowing by the side of the village. He along with his brother had excavated sand from the said river. That M/s.Laxman Valku and Nagu Mahadu removed the said sand in bullock cart and sold it to one contractor, which was seen by his son Narayan.

20. On 21st May, 1994 he went to Laxman Kolambe to enquire as to why did he remove their sand which resulted in heated exchange of words and abuses. It attracted attention of his brother Ramchandra who came to the spot to pacify both of them. In the

meanwhile, Narayan and Mahadeo came on the spot. Durgabai Dattatraya also came on the spot. His brother Ramchandra was addressing him not to raise any quarrel and tried to push him towards his house. In the meanwhile, M/s.Laxman Kolambe and Bahu Valku Kolambe; both came on the spot holding in their hand stick and iron bar respectively. Bhau Valku alleged to have inflicted blow by means of iron bar on the head of Ramchandra, with the result, Ramchandra fell on the ground. Laxman inflicted 3-4 blows on the back of Ramchandra and on his both legs. Durgabai and Janardhan sought to remove Ramchandra to his house who had become unconscious having bleeding from his head. He was, thus, removed to Kadav Hospital in bullock cart for treatment; from there he was removed to Karjat Hospital; from there he was removed to Thane Hospital and, ultimately, to Sion Hospital, Mumbai on the same day. Ramchandra died in the morning hours on 22nd while he was under treatment.

21. The complainant has stated that, he, ultimately, filed complaint on 22nd May, 1994 at 8.00 p.m. which was reduced in writing by the police under his signature. He has proved his complaint (Exh.18) and also identified the iron bar

and stick as article Nos.3 and 4 which were produced before the trial Court. This witness Baban was cross-examined by the accused at length. The entire cross-examination, if read, would make it clear that Baban stood to the test of searching cross-examination and his evidence could not be shaken up.

22. With this, if we travel to P.W.3- Narayan Kolambe, he has also narrated the incident and supported the prosecution version in toto. The appearance of Bhau and Laxman (the appellants) with iron bar and stick and inflicting blows on the victim. The complainant has also proved his complaint. Presence of Durgabai has also been established. He was also cross-examined but his evidence could not be shaken up. His evidence corroborates the evidence of the complainant Baban.

23. With this, if we turn to evidence of P.W.4 Durgabai, she has also given a verbatim picture of the scene and events which have taken place on the scene of offence. She stated that hearing hot talk between Baban and Laxman she went running after Baban and she also followed him to take him back. Ramchandra tried to separate his elder brother

Baban. In the meanwhile Bhau inflicted blow by means of iron bar on the head of Ramchandra. Ramchandra fell down. Laxman inflicted 3-4 blows by means of stick on Ramchandra. She also admitted to have removed Ramchandra along with Janardan to the house. She also identified iron bar and stick shown to her in the Court during trial. She was cross-examined, but no adverse material could be elicited from her.

24. The aforesaid evidence of all the three eye witnesses is in consonance with the medical evidence available on record. Therefore, there is ample corroborative evidence on record to sustain findings recorded by the trial Court and the conviction awarded by it. The view taken by the trial Court is, thus, reasonable and possible view based on proper appreciation of legal evidence. The findings recorded by the trial Court can very-well be supported by the evidence on record. In the circumstances, we do not think any case is made out by the appellants warranting interference with the impugned judgment and order. The view of the trial Court by no means can be said to be perverse.

25. In the result, appeal is dismissed.

. Both the appellant-accused are directed to surrender before the trial Court immediately. On accused surrendering before the trial Court, bail bonds of the accused to stand cancelled.

(V.C.DAGA, J.) **(V.G.PALSHIKAR, J.)**